IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

CRL.A.No. 324 of 2007()

CC.12/2003 of ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM.

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APPELLANT: ACCUSED.

C.SUNILKUMAR,
FORMERLY, ASST. MOTOR VEHICLE INSPECTOR,
SUB REGIONAL TRANSPORT OFFICE, KOTTARAKKARA.

BY ADV. SRI.V.GIRI

RESPONDENTS: STATE & COMPLAINANT.

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. DEPUTY SUPERINTENDENT OF POLICE,
V.A.C.B., KOLLAM UNIT, KOLLAM.

BY PUBLIC PROSECUTOR SRI. C.M.KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON 31.7.2007 DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO.2109 OF 2007 IN CRL. APPEAL NO. 324 OF 2007.

DISMISSED

31.7.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 324 OF 2007

Dated this the 31st day of July, 2007

JUDGMENT

This appeal is filed by the accused in C.C. No.12 of 2003 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The appellant faced trial for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act").

2. The prosecution case against the accused - appellant herein was that on 13.1.2000 while the appellant was working as Assistant Motor Vehicle Inspector, Sub Regional Transport Office, Kottarakkara, he demanded from PW.1 an amount of Rs.250/- as illegal gratification for registering a vehicle and on 14.1.2000 at about 1.30 p.m. accepted the said amount. To prove the case against the appellant, the prosecution examined PWs.1 to 8 and produced Exts.P1 to P16 as well as MOs.1 to 7. On the side of the defence, DWs.1 to 3 were examined and Exts.D1 to D4 and X1were produced. On closing the prosecution evidence, the accused

was questioned under Section 313 Cr.P.C.. The accused denied the charges levelled against him. However, after considering the entire evidence adduced by the prosecution, the trial court found the accused guilty under Sections 7 and 13(1)(d) read with Section 13(2) of the P.C. Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months for the offence punishable under Section 13 (1)(d) read with Section 13(2) of the P.C. Act. The accused was further sentenced to undergo rigorous imprisonment for a period of three years under Section 7 of the P.C. Act. The substantive sentences were ordered to run concurrently. Set off was also granted under Section 428 Cr. P.C. The above conviction and sentences are challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecution for and on behalf of the respondents.

4. Learned counsel appearing for the appellant has raised the following contentions: (i) the trial court committed serious error in placing reliance on the evidence of PW.1, the defacto complainant to prove

that the appellant demanded and accepted an amount of Rs.250/- as bribe as the evidence of this witness before the court below was not in support of the prosecution case, (ii) the trial court ought not to have accepted Ext.P1 first information statement given by PW.1 as this witness deviated from the said statement before the court below. (iii) the evidence of PW.2, the trap witness cannot be considered as a corroborative piece of evidence of PW.1 as PW.2 was only standing at the entrance of the door of the Sub Regional Transport Office and hence he was not in a position to see what had happened inside the office of the appellant, (iv) the evidence of PW.8 does not prove that he nor any of the police officials had seen PW.1 paying the amount to the appellant as alleged by the prosecution and (v) the prosecution had not proved that MO.1 series of currency notes were received by the appellant as bribe as contemplated under Sections 7 and 13 of the P.C. Act.

5. The trial court placed reliance mainly on the evidence of PWs.1, 2 and 8 to find that the accused demanded and accepted bribe of Rs.250/- on 14.1.2000. PW.1 was the defacto complainant who gave Ext.P1 first information statement. He deposed before the court below that PW.5, the son of his sister-in-law had purchased a Hero Honda Motor Bike. He further stated that the Motor Bike had temporary registration upto

17.1.2000 and that he remitted Rs.100/- at the Regional Transport Office, Kottarakkara on 12.1.2000 for getting permanent registration. This witness further stated that after inspecting the Motor Bike, the accused asked him to come to the office on 13.1.2000 after affixing two signatures of the owner of the vehicle in the application form and that when he came to the office on 13.1.2000 after affixing the signatures of the owner of the Motor Bike on the application form, he was told that the accused was at the testing ground at Nellikunnam and that when he went to the testing ground, he met the Senior Vehicle Inspector, Sri. Venugopala Pillai who told him to come to the office the next day with a sum of Rs.250/- as expenses for registering the Motor Bike. At this stage, the witness was declared hostile. This witness also stated that he had not mentioned the name of the appellant to PW.8 when he had given Ext.P1 first information statement.

6. PW.2 was one of the trap witnesses who was examined by the prosecution to prove that PW.1 went to the office of PW.8 and filed Ext.P1 first information statement. This witness also stated that PW.1 gave MO.1 series of currency notes to PW.8 who after applying phenolphthalein powder on the currency notes entrusted the same to PW.1 as per Ext.P5 mahazar. He further stated that he had accompanied

PW.1 to the office of the appellant and had seen PW.1 handing over Rs.250/- to the appellant and the appellant placing the same in the drawer of his table. This witness also stated that as soon as the appellant accepted the money, PW.1 gave the signal as instructed and that on getting the signal, PW.8 and the other officials came to the room of the appellant and recovered MO.1 currency notes from the drawer of the table which when dipped in lime water gave positive result and thereafter PW.8 arrested the appellant. The evidence of this witness that MO.1 series of currency notes were recovered from the drawer of the appellant's table is corroborated by the evidence of PW.8. This witness stated that PW.1 came to his office on 14.1.2000 and gave Ext.P1 first information statement. PW.8 also stated that he directed PW.1 to produce MO.1 currency notes and that after treating the currency notes with phenolphthalein powder, he entrusted the currency notes to PW.1 to give the same to the appellant. He further stated that he recovered MO.1 series of currency notes from the drawer of the table of the appellant as per Ext.P6 mahazar. PW.8 also deposed that he had obtained Ext.P13 sanction order to prosecute the accused.

7. The question to be considered in this appeal is whether the evidence of PWs.1, 2 and 8 can be accepted as the basis for proving the

prosecution case regarding demand and acceptance of MO.1 series of currency notes as bribe by the appellant.

8. Even though PW.1 gave Ext.P1 first information statement before PW.8 , he actually deviated from Ext.P1 statement and stated before the court below that it was one Venugopala Pillai, the Senior Vehicle Inspector who had demanded bribe from him on 13.1.2000. In chief examination, this witness stated as follows:

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When cross-examined this witness stated that when he went to the office of the appellant with the application after affixing two signatures of the owner of the Motor Bike, as directed by the appellant, he met the Senior Vehicle Inspector and not the appellant. From the evidence of PW.1, the prosecution cannot make out a case that the appellant was the person who demanded Rs.250/- as bribe from PW.1 on 13.1.2000.

9. PW.2 was the trap witness arranged by PW.8. He deposed before the court below that as instructed by PW.8, he and CW.3 accompanied PW.1 to the office of the appellant and had seen PW.1 handing over Rs.250/- to the appellant and the appellant placing the same in the drawer of his table. This witness also stated that as soon as the appellant accepted the money, PW.1 gave the signal as instructed and that on getting the signal, PW.8 and the other officials came to the room of the appellant and recovered MO.1 currency notes from the drawer of the table which when dipped in lime water gave positive result and thereafter PW.8 arrested the appellant. When cross-examined, this witness stated as follows:

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From the above version, it is clear that PW.2 had not seen what had happened in the office of the appellant. In this context, learned counsel appearing for the appellant placed reliance on the decision of the Apex Court reported in **Meena v. State of Maharashtra (2000) 5 S.C.C. 21** wherein the Apex Court held as follows:

> ..... Law has always favoured the presence and importance of a shadow witness in the trap party, not only to facilitate such witness to see but also to overhear what happens and how it happens. ....."

From the above judgment, it is clear that the evidence of a shadow witness needs corroboration. In the case in hand, PW.1 had not supported the prosecution case regarding demand and acceptance of bribe by the appellant. The evidence of PW.2 that MO.1 series of currency notes were recovered from the drawer of the appellant's table is also relevant. According to PW.2, he was present when PW.8 and the other officials entered the room of the appellant and recovered MO.1 series of currency notes from the drawer of the table of the appellant. He stated that he was present even when phenolphthalein test was conducted by PW.8. The result of the phenolphthalein test alone is not sufficient to prove the prosecution case against the appellant. The evidence of PW.2 has to be considered very cautiously with regard to the exact position of the room where the appellant was sitting at the time of the incident. Considering Ext.P12 plan prepared by the Village Officer and Ext.P6 mahazar prepared by PW.8, it is doubtful whether PW.2 could see what had happened inside the room of the appellant. The evidence of PW.2 that he had seen the appellant accepting the bribe cannot be believed as this witness had stated that at the time of the incident he was standing at the entrance of the room, marked as item No.20 in Ext.P12 plan. In this context, the trial court had

considered the evidence of PW.6. This witness had stated that there was a half door in between the room of the appellant and the place where PW.2 was standing. Even though the trial court did not accept the evidence of PW.6, the evidence of PWs.2 and 8 creates doubt regarding the prosecution evidence that PW.2 had seen what had happened inside the room of the appellant. If such a doubt arises, the benefit of that doubt should go to the appellant. Apart from the fact that the evidence of PW.2 is not corroborated by any other independent evidence, the evidence of this witness conflicts with the evidence of PW.1 regarding the acceptance of bribe by the appellant. Hence, this Court is not in a position to accept the evidence of PW.2 to prove the prosecution case against the appellant.

10. The evidence of PW.2 that MO.1 series of currency notes were recovered from the drawer of the appellant's table is corroborated by the evidence of PW.8. The evidence of this witness is also made the basis for proving the prosecution case against the appellant. PW.8 stated before the court below that PW.1 came to his office on 14.1.2000 and gave Ext.P1 first information statement. PW.8 also stated that he directed PW.1 to produce MO.1 currency notes and that after treating the currency notes with phenolphthalein powder, he entrusted the currency notes to PW.1 to give the same to the appellant. He further stated that he recovered MO.1

series of currency notes from the drawer of the table of the appellant . However, this witness admitted that the Senior Vehicle Inspector Sri. Venugopala Pillai was present in the office of the appellant during the relevant time. He also admitted that there were other people in the room, but no one had signed the recovery mahazar. Further, PW.8 had not stated whether Sri. Venugopala Pillai was examined or questioned by him.

11. It has come out from the evidence of PWs.2 and 6 that the Senior Vehicle Inspector Sri. Venugopala Pillai and other people were also present in the room of the appellant at the time of the incident. The presence of Sri. Venugopala Pillai in the room of the appellant during the relevant time is proved by the attendance register kept in the office of the appellant which PW.8 had seized. The fact that Sr. Venugopala Pillai was not questioned or examined by PW.8 is an important aspect to be considered in the light of the case set up by the appellant when questioned under Section 313 Cr.P.C. PW.8 had not given any explanation for the non examination of the Senior Vehicle Inspector, Sri. Venugopala Pillai.

12. The trial court found that if PW.1 had a case that it was the Senior Vehicle Inspector who had demanded the bribe, he would have stated so in Ext.P1 first information statement given to PW.8. The

statement of PW.8 in cross-examination also creates doubt regarding the prosecution case. Mere recovery of the marked currency notes from the drawer of the table of the appellant by itself is not a ground to hold that the prosecution succeeded in proving the case against the appellant. The case set up by the appellant and the evidence of PW.1 would show that the appellant had not demanded or accepted bribe. In this context, learned counsel appearing for the appellant placed reliance on the decision of the Apex Court reported in **M.K.Harshan v. State of Kerala, A.I.R. 1995 S.C. 2178** wherein the Apex Court held as follows:

> "Where in a trap case, the tainted money was recovered from the drawer of the accused and the trap witness stated that accused has said to put them in drawer, in absence of evidence corroborating his deposition same cannot be relied up, more particularly when the plea of the accused that the same was planted in his absence and without his knowledge was found to be probable. ..... "

Learned counsel also placed reliance on another judgment of the Apex Court reported in **Suraj Mal v. State (Delhi Administration), 1980 S.C.C.(Cri) 159.** In the above judgment, the Apex Court considered the same fact situations as that of the case in hand and held that mere recovery by itself cannot prove the charge of the prosecution in the absence of any

evidence to prove payment of bribe or that the appellant voluntarily accepted the money.

13. In the light of the discussions made in this judgment and the findings entered, this Court is of the view that the prosecution did not succeed the proving the case against the appellant beyond reasonable doubt. Hence, the judgment of the trial court is set aside and the appellant is acquitted of all the charges levelled against him.

The Crl. Appeal is accordingly allowed. The bail bonds executed by the appellant shall stand cancelled.

(K.THANKAPPAN, JUDGE)

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